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SUBJECT: ACADEMICS, LEGAL PROFESSIONALS AND OFFICIALS DEBATE PROPERTY RIGHTS AT ADMINISTRATIVE LAW CONFERENCE

CLASSIFIED BY: Christopher Beede, Pol/Econ Section Chief, U.S. Consulate, Shanghai .
REASON: 1.4 (b), (d)

¶1. (C) Summary: During the August 6-8 National Administrative Law Society Annual Conference in Nanjing, Chinese legal experts and officials had lively exchanges on the role of the government in property disputes. Academics argued for less government intervention in property dispute cases and more public supervision of the sale of state-owned assets. Academics also called on the government to respect the private property rights of common people and not unduly confiscate private houses in the name of public interest without due process and full compensation. Officials attending the conference asserted that the government needs to actively manage state-owned assets and the protection of state-owned assets is a political decision to be decided by the Party and government and not the law. End Summary.

Property Rights: Less Government, More Public Supervision

¶2. (SBU) The National Administrative Law Society held its annual conference in Nanjing, Jiangsu Province on August 6-8. The National Administrative Law Society is a semi-governmental organization with members from government, congress, courts and universities. Some of its members are involved in drafting national administrative laws. The theme of this year's conference was administrative law and property rights protection. Around 250 Chinese scholars, judges, government officials and lawyers, as well as FSN Rule of Law Coordinator attended the conference. The conference was not open to the media and considered to be an internal conference.

¶3. (C) During the conference, many scholars called for less government intervention on property rights disputes. West-South China University of Law and Politics Professor Wang Xuhui said the government should use self-restraint and not actively intervene in property cases at its own will. In addition, the government should let the market take its own course and determine property issues. Shandong University Law School Dean Professor Xiao Jinming said that currently only half of the

government's income comes from taxes and much income comes from collecting fees from land and selling land use rights. These functions are not under the People's Congress's supervision and common people have no voice in property decisions. According to Xiao, more must be done to strengthen property rights to prevent the government from being able to dispose of property without input from the people.

14. (C) The State Council Legislative Affairs Office Policy and Law Center Director Li Yuefei disagreed with the academics. He said that although there are cases in which the government should take a back seat and not intervene in property disputes, there are other cases in which the government must actively intervene, especially when state-owned enterprises are involved. The government has two different roles in relation to property. Government agencies that act as public affairs administrators should be more impartial and passive on property issues. However, those agencies that manage state property should act as asset managers and actively manage their property.

Protection of State-Owned Assets: Legal or Political Issue?

15. (C) Academics and government officials also disagreed as to whether the protection of state-owned assets should be governed by the law or political considerations. Chongqing Municipal Government Legal Affairs Office Director Li Jianxin claimed that the issue of protecting state-owned assets is a political issue and should be decided by the government and Party not by the law. Suzhou University Professor Huang Xuejian strongly disagreed and said state-owned assets and private property should be protected equally under the law. Using the political system is an excuse and reform of the property system is necessary. Fudan University Professor Shen Fujun agreed with Huang and said that only the law should prevail in property

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issues. Some officials should change their minds instead of changing the law.

Due Process and Full Compensation for Confiscated Property

16. (C) Participants also debated the issue of land and housing confiscation. Most academics called on the government to respect the private property rights of common people and to not confiscate private houses in the name of public interest without due process and full compensation. China University of Politics and Law Professor Zhang Shuyi said that in the current market economy era, the traditional theory of supreme status of public interest should be changed. The purpose of the government should be based on the protection of its citizens' private property and respecting citizens' land and housing rights is crucial. China Administrative Law Society Vice Secretary General Professor Mo Yucuan said confiscation of farmers' land should be compensated fully not just "reasonably" and the government should not make profit on such confiscations. He added that farmers should also be allowed to have their own representative to help them bargain with the government when their land is confiscated.

17. (C) Beijing High Court Vice President Wang Zhengqin assured participants that his court is well prepared for the implementation of China's Property Law that will enter into force on October 10. The court will protect farmers' land and houses, which he called "the lifeline of common people."

It's Not Easy Being a Lawyer

18. (C) In one of the more interesting sessions of the conference, Zhibang Law Firm Partner Li Chen, who was also a conference sponsor, complained publicly about the dilemma faced by many administrative litigation lawyers who represent people suing the government. He said the practice environment for administrative litigation lawyers is very difficult. Lawyers

often face pressure from the government and many consider it to be a high risk job. For example, after one trial, he was unable to leave the courtroom for hours because he was surrounded by disgruntled people.

Comment

19. (C) Although the conference was open to academics and students, it was considered to be an internal conference where legal experts could candidly discuss issues without the presence of the media. The discussions provide a rare glimpse into the type of debates going on among academics and legal professionals on these sensitive issues and are an indication that at least some academics and legal professionals are pushing for change.

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